



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

AUG 27 1998

Office of the Assistant Secretary
AFBCMR 97-02981

MEMORANDUM FOR THE CHIEF OF STAFF

Having received and considered the recommendation of the Air Force Board for Correction of Military Records and under the authority of Section 1552, Title 10, United States Code (70A Stat 116), it is directed that:

The pertinent military records of the Department of the Air Force relating to [REDACTED] be corrected to show that the Company Grade Officer Performance Report (OPR), AF Form 707B, rendered for the period 16 June 1990 through 1 May 1991, be corrected in Section VI (Rater Overall Assessment) and Section VII (Additional Rater Overall Assessment) by adding the statement: "He ~~was~~ selected for the coveted Constant Carrot Award."

It is further directed that his corrected record be considered by Special Selection Board (SSB) for the Calendar Year 1997C Central Major Selection Board.


JOE G. LINEBERGER
Director
Air Force Review Boards Agency

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

AUG 27 1998

IN THE MATTER OF:

DOCKET NUMBER: 97-02981

COUNSEL: None

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

His Officer Performance Report (OPR) rendered for the period 16 Jun 90 through 1 May 91 be declared void and replaced with a revised report covering the same period.

APPLICANT CONTENDS THAT:

He received the Constant Carrot Award which is given to only one pilot in the wing and the receiver is given his or her choice of aircraft. It is awarded for exceptional performance and skill in the recipient's aircraft and as recognition and incentive for continued excellence. To exclude this important fact from his records neglects a significant accomplishment that could be an important factor in the future and adversely affect his career progression.

In support of his appeal, the applicant provided a copy of the contested report, a revised version of the OPR, and statements from the rater and additional rater of the report in question.

Applicant's complete submission is attached at Exhibit A.

STATEMENT OF FACTS:

The applicant's Total Active Federal Military Service Date (TAFMSD) is 27 May 87. He is currently serving on active duty in the grade of captain, effective, and with a date of rank (DOR) of 27 May 91.

Applicant's OPR profile since 1989 follows:

<u>PERIOD ENDING</u>	<u>OVERALL EVALUATION</u>
19 May 89	Meets Standards
25 Dec 89	Meets Standards
15 Jun 90	Meets Standards
* 1 May 91	Meets Standards
13 Jun 92	Meets Standards
13 Jun 93	Meets Standards
10 Dec 93	Education/Training Report (TR)
13 Jun 94	Meets Standards
24 Apr 95	Meets Standards
14 Mar 96	Meets Standards
14 Mar 97	Meets Standards

* Contested report.

AIR FORCE EVALUATION:

The Chief, Appeals & SSB Branch, AFPC/DPPPA, reviewed this application and indicated that Air Force policy is that an evaluation report is accurate as written when it becomes a matter of record and it takes substantial evidence to the contrary to have a report changed or voided. To effectively challenge an OPR, it is important to hear from all the evaluators from the report—not only for support, but for clarification/explanation. In fact, the revised version of the contested report was signed by an individual from outside the applicant's original rating chain. While the applicant contends that he was unable to locate the reviewer from the original report and further alleges that he (reviewer) may have been removed from the Air Force for cause, according to AFR 31-11, paragraph A2-a and A2-b, the applicant has the sole responsibility for gathering documentation to support his allegations. Further, he may enlist the aid of the Air Force Worldwide Locator to find individuals who have retired or are no longer serving on active duty.

DPPPA notes that the applicant's replacement report not only includes a statement concerning his receipt of the "Constant Carrot Award" (per his request), but contains statements from both evaluators recommending him for attendance to Squadron Officer School (SOS) in residence. It is apparent the evaluators from the report have attempted to inflate their original assessment of the applicant in order to accommodate their addition of a professional military school recommendation by adding and/or deleting comments presently on the contested report. Evaluation reports receive exhaustive reviews prior to becoming a matter of record and any report can be rewritten to be more hard hitting, to provide embellishments, or enhance the

ratee's promotion potential but the time to do that is before the report becomes a matter of record. None of the supporters of the applicant's appeal explain how they were hindered from rendering a fair and accurate assessment of the applicant's performance prior to the report being a matter of record. The appeals process does not exist to recreate history or enhance chances for promotion. As such, DPPPA is not convinced the contested report is not accurate as written and does not support the request for removal and replacement.

DPPPA further indicates that, the contested OPR has been a matter of record for six years and the test to be applied is not merely whether the applicant discovered the error within three years, but whether, through due diligence, he could or should have discovered the error(s). Clearly, the alleged error(s) upon which he relies has/have been discoverable since publication of the OPR in question. Further, Department of Defense (DOD) Directive 1320.11 states, "A special selection board shall not...consider any officer who might, by maintaining reasonably careful records, have discovered and taken steps to correct that error or omission on which the original board based its decision against promotion." Therefore, DPPPA sees no valid reason to waive the statute of limitations and consider the applicant's requests. They assert the applicant's OPR was accomplished in direct accordance with Air Force policy in effect at the time the report was rendered. Based on the evidence provided, they recommend denial.

DPPPA further points out that the applicant failed to reaccomplish the proposed replacement report on the appropriate version of the AF Form 707B, Company Grade Officer Performance Report. If the Board decides to replace the OPR, the applicant should reaccomplish the replacement report on the Aug 88 version of the AF Form 707B which was in effect at the time the OPR was originally rendered on 1 May 91.

A complete copy of the Air Force evaluation is attached at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to applicant on 2 Dec 97 for review and response. As of this date, no response has been received by this office.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. After reviewing the evidence of record, we are not sufficiently persuaded that the contested report should be declared void and replaced with a reaccomplished report covering the same period. The statements from the rater and additional rater provided for our review are not sufficiently persuasive to demonstrate that the report in question is flawed or that the assessments of the applicant's performance were erroneous at the time they were rendered. After considering all the evidence, we believe that the ratings on the report were honest assessments of applicant's performance at the time the report was prepared. In view of the foregoing, we find no compelling basis to recommend granting the relief sought in this application.

4. Notwithstanding the above, after noting the statements from the rater and additional rater of the report in question, who indicate that the accomplishment of the Constant Carrot Award was an oversight and not known to them until recently, a majority of the Board is sufficiently persuaded that the award in question should be reflected on applicant's OPR closing 1 May 91. Therefore, a majority of the Board concludes that Constant Carrot Award should be added to the OPR as indicated below and that his corrected record be considered by an SSB.

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected to show that the Company Grade Officer Performance Report (OPR), AF Form 707B, rendered for the period 16 June 1990 through 1 May 1991, be corrected in Section VI (Rater Overall Assessment) and Section VII (Additional Rater Overall Assessment) by adding the statement: "He was selected for the coveted Constant Carrot Award."

It is further recommended that his corrected record be considered by SSB for the Calendar Year 1997C (CY97C) Central Major Selection Board.

The following members of the Board considered this application in Executive Session on 4 August 1998, under the provisions of AFI 36-2603:

Ms. Martha Maust, Panel Chair
Mr. Richard A. Peterson, Member
Mr. Patrick R. Wheeler, Member
Mrs. Joyce Earley, Examiner (without vote)

By a majority vote, the Board voted to correct the records, as recommended. Mr. Wheeler voted to deny applicant's request but does not desire to submit a minority report. The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 23 Oct 97, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFPC/DPPPA, dated 17 Nov 97.
- Exhibit D. Letter, AFBCMR, dated 2 Dec 97.


MARTHA MAUST
Panel Chair



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR FORCE PERSONNEL CENTER
RANDOLPH AIR FORCE BASE TEXAS

17 NOV 1997

MEMORANDUM FOR AFBCMR

FROM: HQ AFPC/DPPPA
550 C Street West, Suite 8
Randolph AFB TX 78150-4710

SUBJECT: [REDACTED]

Requested Action. Applicant requests his officer performance report (OPR) that closed out 1 May 91 be replaced with a revised version of the report. Although not specifically requested, we assume the applicant would like Special Selection Board (SSB) consideration by the CY97C (16 Jun 97) (P0497C) central major promotion board below-the-promotion zone (BPZ).

Basis for Request. Applicant would like to include his receipt of the "Constant Carrot Award" in the contested OPR. He contends this exclusion was an oversight that could adversely affect his career progression.

Recommendation. Time bar. If the AFBCMR considers, then we recommend denial due to lack of merit. By law, a claim must be filed within three years of the date of discovery of the alleged error or injustice (10 U.S.C. 1552[b]). It is obvious that the errors claimed here were discoverable at the time they occurred. The applicant provided nothing to convince us that the errors were not discoverable until 15 Jan 96, nor has he offered a concrete explanation for filing late. While we would normally recommend the application be denied as untimely, we are aware that the AFBCMR has determined it must adhere to the decision in the case of *Detweiler v. Pena*, 38F.3d591 (D.C. Cir 1994)--which prevents application of the statute's time bar if the applicant has filed within three years of separation or retirement.

Facts and Comments:

a. Application is not timely. Applicant did not submit a similar appeal under AFR 31-11, Correcting Officer and Enlisted Evaluation Reports. We did not return the application because the applicant failed to provide support from the reviewer of the contested report. Applicant has not yet been considered in-the-promotion zone (IPZ) for promotion to the grade of major.

b. AFR 36-10, The Officer Evaluation System, 1 Aug 88, is the governing directive.

c. In support of his appeal, the applicant submits letters from the rater and additional rater of the contested report, a copy of the existing report, and a copy of the revised version of the report.

9702981

d. Air Force policy is that an evaluation report is accurate as written when it becomes a matter of record. It takes substantial evidence to the **contrary** to have a report , changed or voided. To effectively challenge an OPR, it is important to hear **from all** the evaluators from the report--not only for support, but for clarification/explanation. **In** this instance, the applicant failed to provide information from the reviewer of the contested report. **In** fact, the revised version of the contested report was signed by **an** individual from outside the applicant's original rating chain. The applicant contends he was unable to locate the reviewer **from** the original report and further alleges he may have been removed **from** the Air Force for cause. According to *AFR 31-11*, para A2-a **and** A2-b, the applicant **has** the **sole** responsibility for gathering documentation to support **his** allegations. Further, he may enlist **the** aid of the Air Force Worldwide Locator to find individuals who have retired or are no longer serving on active duty. Their address is HQ AFPC/MSIMDL, 550 C Street West, Suite 50, Randolph AFB TX 78150-4752.

e. We note the applicant's replacement report not **only** includes a statement concerning **his** receipt of the "Constant Carrot Award" (per his request), but contains statements **from** both evaluators recommending **him** for attendance to Squadron Officer School (SOS) in residence. It **is** apparent the evaluators from the report have attempted to inflate their **original** assessment of the applicant in order to accommodate their addition of a professional military school recommendation by adding and/or deleting comments presently on the contested report.

E Evaluation reports receive exhaustive reviews prior to becoming a matter of record. Any report can be rewritten to be more hard hitting, to provide embellishments, **or** enhance the **ratee's** promotion potential. But the time to do that is **before** the report becomes a matter of record. None of the supporters of the applicant's appeal explain how they were hindered from rendering a fair and accurate assessment of the applicant's performance prior to the report being made a matter of record. The appeals process **does** not exist **to** recreate history or enhance chances for promotion. **As** such, **we** are not convinced the contested report is not accurate as written and do not support the **request** for removal and replacement.

g. The applicant failed to reaccomplish the proposed replacement report on the appropriate version of the AF Form 707B, Company Grade Officer Performance Report. If the board decides to replace the OPR, the applicant should reaccomplish the replacement report on the **Aug 88** version of the AF Form **707B** which was in effect at the time the OPR was originally rendered 1 May 91.

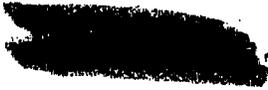
h. The contested OPR has been a matter of record for **six** years. The test to be applied is not merely whether the applicant **discovered** the error within three years, but whether through due diligence, he could or should have discovered the error(s) (see OpJAGAF 1988/56, 28 Sep **88**, and the cases cited therein). Clearly, the alleged error(s) upon which he relies has/have been discoverable since publication of the OPR in question. Further, DoD Directive 1320.11 states, "A special selection board shall not...consider **any** officer who might, by maintaining reasonably careful records, have discovered and taken steps to correct that error or omission on which the original board based its decision against promotion." Therefore, we see no valid reason to waive the statute of limitations and consider the applicant's requests. We assert

9702981

the applicant's OPR was accomplished in direct accordance with Air Force policy in effect at the time the report was rendered. We, therefore, conclude SSB consideration is unwarranted.

Summary. Based on the evidence provided, our recommendation of denial is appropriate.


MARIANNE STERLING, Lt Col, USAF
MARIANNE STERLING, Lt Col
Chief, Appeals and SSB Branch
Directorate of Personnel Program Mgt



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